IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 10167 of 2007
Date of decision 13 .12 .2007

M/s Motorola India Pvt. Ltd.Gurgaon .. petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

PRESENT: Mr.M.L.Sarin, Sr. Advocate with
Mr. Ashim Aggarwal and Ms. Sushma Aggarwal, Advocates
for the petitioner
Ms.Ritu Bahri, DAG Haryana.

M.M.Kumar, J.

The petitioner has approached this Court with a prayer for quashing summons dated 2.7.2007 (Annexure P.8) and for issuance of directions to the Excise and Taxation Officer-cum-Assistant Collector, respondent no. 3, not to recover the amount of Tax. A further direction has been sought that the appeal of the petitioner be heard by the Joint Excise and Taxation Commissioner (Appeals), Haryana, respondent no.2, before the date given to the petitioner for making the payment by the Excise and Taxation Officer cum Assessing authority, respondent no.3.

When the matter came up for hearing before this Court on July 12,2007, notice of motion was issued and we have asked the State Counsel to seek instructions as to whether the appeal which was posted for hearing on 19.7.2007 could be disposed of on the date fixed. On 13.7.2007 we have further passed the following directions:

> " In pursuance to order dated 12.7.2007, Ms. Ritu Bahri, learned Deputy Advocate General, Haryana has submitted that the appeal of the petitioner is pending before the Joint Excise

and Taxation Commissioner (Appeals), Haryana- respondent no.2 and it may be decided on 19.7.2007 or it may take some more time.

According to the tax demand raised, an amount of Rs. 20,36,02,297/- is payable by the petitioner. However, it is claimed that the tax liability so calculated is liable to be reduced to virtually zero because there are documents of proof of high sea sales which have already been produced before the Assessing Officer.

However, keeping in view the interest of the petitioner as well as of the revenue, we are of the view that ends of justice would be served if the petitioner deposits a sum of Rs. 1 crore with the respondents within a period of two weeks. The deposit of the amount of Rs. 1 crore shall remain subject to further order of this Court and the result of the appeal pending before respondent no.2. We hope that the appeal is heard on 19.7.2007 itself.

Subject to the afore-mentioned, the interim directions shall continue.

List again on 20.8.2007.

Reply, if any, be filed a week before the adjourned date with an advance copy to the learned counsel for the petitioner.

Copy of this order be given dasti on payment of usual charges."

At the hearing today, it has been pointed out by both the learned

counsel that the appeal filed by the petitioner has been allowed on 19.9.2007 by the Joint Excise and Taxation Commissioner (Appeals) upholding that the assessment order was non speaking and the same was set aside. The appellate authority has granted one more opportunity of being heard to the petitioner by the Assessing Authority. The case has been remanded back to the Assessing Authority for *de novo* assessment after providing a fair opportunity of being heard to the petitioner.

In view of the afore-mentioned factual position the instant petition has been rendered infructuous. It was in pursuance to the order dated 13.7.2007 that a sum of rupees one crore was deposited by the petitioner with the respondent. As the appeal has been allowed and the assessment order has been set aside the amount of rupees one crore deposited by the petitioner deserves to be given back to them. Therefore, we direct the respondents to pay back the amount of rupees one crore within two weeks from the receipt of copy of this order.

The writ petition stands of in the above terms.

(M.M.Kumar)
Judge

(Rakesh Kumar Jain)
Judge

13.12.2007
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